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2 **UNITED STATES DISTRICT COURT**  
3 **FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

4 MICHELLE JOHNSON, )  
5 Plaintiff, ) **C.A. No.:**  
6 )  
7 v. )  
8 COLORADO TECHNICAL )  
9 UNIVERSITY, ) **COMPLAINT AND DEMAND FOR**  
10 Defendant. ) **JURY TRIAL**

11 **COMPLAINT**

12  
13 MICHELLE JOHNSON (“Plaintiff”), by and through her attorneys,  
14 KIMMEL & SILVERMAN, P.C., alleges the following against COLORADO  
15 TECHNICAL UNIVERSITY (“DEFENDANT”):

16  
17 **INTRODUCTION**

18 1. Plaintiff’s Complaint is based on the Telephone Consumer Protection  
19 Act, 47 U.S.C. §227.

20  
21 **JURISDICTION AND VENUE**

22 2. Jurisdiction of this Court arises under 28 U.S.C. § 1331. See Mims v.  
23 Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

24  
25 3. Defendant regularly conducts business in the Commonwealth of  
26 Pennsylvania, thus, personal jurisdiction is established.

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

2 **PARTIES**

3 5. Plaintiff is a “person” as that term is defined by 47 U.S.C. §153(39).

4 6. Plaintiff is a natural person residing in Philadelphia, Pennsylvania  
5 19143.

6 7. Defendant is a “person” as that term is defined by 47 U.S.C. §  
7 153(39).

8 8. Defendant is a corporation with its principal place of business located  
9 at 4435 N. Chestnut Street, Colorado Springs, CO 80907.

10 9. Defendant acted through its agents, employees, officers, members,  
11 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,  
12 representatives, and insurers.

13 **FACTUAL ALLEGATIONS**

14 10. Plaintiff has a cellular telephone.

15 11. Plaintiff has only used this phone as a cellular telephone.

16 12. Beginning in or around April 2016 and continuing thereafter,  
17 Defendant placed repeated telephone calls to Plaintiff’s cellular telephone,  
18 typically calling Plaintiff multiple times daily.

19 13. Defendant used an automatic telephone dialing system, automated  
20 message and/or prerecorded voice when contacting Plaintiff.

1           14. Plaintiff knew that Defendant was using automatic telephone dialing  
2 system, automated message and/or prerecorded voice because the calls would  
3 begin with a recording before transferring the calls to live agents.  
4

5           15. Defendant's telephone calls were not made for "emergency purposes"  
6 rather, Defendant was attempting to contact Plaintiff regarding their educational  
7 programs.  
8

9           16. It was annoying and harassing for Plaintiff to be called on her cellular  
10 telephone with such frequency.

11           17. Desiring to stop the repeated telephone calls, Plaintiff spoke with  
12 Defendant's callers in or around April 2016 to advise them she no longer wanted to  
13 be contacted on her cellular telephone, thereby revoking any consent that may have  
14 been previously given to Defendant to contact her on this number.  
15

16           18. Once Defendant was aware that its calls were unwanted, its continued  
17 calls could have served no purpose other than harassment.  
18

19           19. However, Defendant failed to update its records to restrict telephone  
20 calls to Plaintiff's cellular telephone and continued to call Plaintiff on her cellular  
21 telephone multiple times per day thereafter.  
22

23           20. After Plaintiff's repeated requests to stop the calls were ignored by  
24 Defendant, she had no other alternative but to block calls from Defendant's phone  
25 number.  
26

1           21. Upon information and belief, Defendant conducts business in a  
2 manner which violates the TCPA.

3  
4                                   **COUNT I**  
5                                   **DEFENDANT VIOLATED THE TELEPHONE CONSUMER**  
6                                   **PROTECTION ACT**

7           22. Plaintiff incorporates the forgoing paragraphs as though the same were  
8 set forth at length herein.

9           23. Defendant initiated multiple automated telephone calls to Plaintiff's  
10 cellular telephone number.

11           24. Defendant's initiated these automated calls to Plaintiff using an  
12 automatic telephone dialing system.

13           25. Defendant repeatedly placed non-emergency calls to Plaintiff's  
14 cellular telephone.

15           26. Under § 227(b)(3)(A) of the TCPA, a person or entity may bring a  
16 private cause of action in an appropriate court based on a violation of the TCPA or  
17 the regulations prescribed under the TCPA to enjoin such violation.  
18

19           27. Under § 227(b)(3)(B) of the TCPA, a person or entity may bring a  
20 private cause of action in an appropriate court "to recover for actual monetary loss  
21 from such a violation, or to receive \$500 in damages for each such violation  
22 whichever is greater."  
23  
24

1        28. Based upon the conduct of Defendant, Plaintiff avers that the  
2 enhancement of damages provided for by the TCPA allowing for Plaintiff to  
3 recover up to \$1,500 per call/violation be applied to calls placed.  
4

5        29. Defendant's conduct violated § 227(b)(1)(A)(iii) of the TCPA by  
6 placing repeated calls using an automatic telephone dialing system to Plaintiff's  
7 cellular telephone.  
8

9        30. Defendant's calls to Plaintiff's cellular telephone after she revoked  
10 consent in April 2016 were not made with Plaintiff's prior express consent.

11        31. Defendant's acts as described above were done with malicious,  
12 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights  
13 under the law and with the purpose of harassing Plaintiff.  
14

15        32. The acts and/or omissions of Defendant were done unfairly,  
16 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,  
17 lawful right, legal defense, legal justification or legal excuse.  
18

19        33. As a result of the above violations of the TCPA, Plaintiff has suffered  
20 the losses and damages as set forth above entitling Plaintiff to an award of  
21 statutory, actual and trebles damages.  
22  
23  
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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, MICHELLE JOHNSON, respectfully prays for a judgment as follows:

- a. All actual damages suffered pursuant to 47 U.S.C. § 227(b)(3)(A);
- b. Statutory damages of \$500.00 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3)(B);
- c. Treble damages of \$1,500.00 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3);
- d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3); and
- e. Any other relief deemed appropriate by this Honorable Court.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, MICHELLE JOHNSON, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

Dated: November 22, 2016

By: /s/ Amy Lynn Bennecoff Ginsburg  
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